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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Revision of Part 2 of the	)	
Commission's Rules Relating	)	ET Docket No. 94-45
to the Marketing and	)	RM-8125
Authorization of Radio	)	
Frequency Devices	)	

REPLY COMMENTS OF
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION

The Association for Maximum Service Television, Inc. ("MSTV") hereby files reply comments to the comments filed in response to the Notice of Proposed Rulemaking, ET Docket No. 94-45, released in the above captioned docket on June 9, 1994 (the "Notice").

Notwithstanding assertions to the contrary by some electronics manufacturers, it is plain that the proposed revisions to the Commission's RF marketing rules would generate a non-trivial risk of additional interference to licensed operations. For the reasons set forth in MSTV's comments, the proposed rules do not adequately safeguard licensed operations, including television broadcasters, from harmful interference from unauthorized RF devices. See Comments of MSTV, ET Docket No. 94-45, at 6-9 (September 6, 1994).[1/]

[1/] MSTV agrees with the E.F. Johnson Co. that it "is critical, therefore, for the Commission to discourage the marketing of devices that do not meet the stringent requirements which ensure that [licensed] communications do not experience harmful interference." See Comments of E.F. Johnson Co., ET Docket No. 94-45, at 3-4 (September 6, 1994). Moreover, even proponents of the liberalization of the Commission's RF devices marketing rules have conceded that the

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As will be explained more fully below, in their initial comments IBM, Alcatel, and EIA/CEG have made proposals that could exacerbate the negative effects of the proposed rule changes. In no case, however, does the proposing party proffer a substantial public interest benefit which would justify the potential degradation of existing services.

I. IBM's Proposal to Abandon Certification.

IBM urges the Commission to abandon its certification program entirely, and replace it with verification. Comments of IBM, ET Docket No. 94-45, at 6-7 (September 6, 1994). IBM's views are grounded in the assertion that the certification process is "an anachronism in today's personal computer marketplace," in which many products, particularly computer peripherals, have marketing life-cycles of periods as short as four to six months. Id. at 7, 9-10. IBM asserts that, in the context of these short product life-cycles, "the [one-month] delays resulting from [the certification] procedure are no longer warranted" and that verification is an "equally effective method of ensuring compliance." Id. at 7. IBM notes that the European Union allows for self-certification, and alleges that U.S. manufacturers are somehow prejudiced by this differential treatment. Id. at 10-11.

[1/](...continued)
proposed rules, if adopted, will lead to increased interference to licensed services, including television broadcasting. According to CBEMA, the rules as proposed "are likely to be ineffective in limiting the operation of large numbers of potentially harmful non-compliant devices." Comments of CBEMA, ET Docket No. 94-45, at 3 (September 6, 1994).

Neither the alleged delays attendant upon certification nor the European Union procedures provide any basis for altering the Commission's policy. To begin with, even IBM concedes that the delay in question is at most but one month in duration. Moreover, if this short distribution delay is being applied uniformly to all producers and all products, it merely has had the effect of pushing back slightly the introduction of all such products and should not have prejudiced any particular product. Thus, if certification is required of both the initial product and the innovation or successor product, the marketing window for the initial product will be precisely the same as it would have been without certification because it will delay the new product just as long as it delayed the initial product.

The apparent reasoning underlying the European experience is similarly defective. U.S. certification requirements on their face apply evenly to all manufacturers, foreign and domestic, who seek to market their products in the United States. In Europe, if IBM is to be believed, neither foreign nor domestic manufacturers suffer any such delay. But U.S. certification procedures do not preclude domestic electronics manufacturers, like IBM, from selling their products in foreign markets prior to receiving Commission approval.[2/]

[2/] Relatedly, it is unclear why the United States should bring its product approval procedures "into line" with those of the European Union. See Comments of IBM, at 10. Domestic companies that wish to sell their products in the European Union must comply with the dictates of community law, just as (continued...)

In both places, then, the rules apply equally to all who distribute in that place and there is no unfair advantage accruing from the fact that different rules apply in the two jurisdictions.

What then is IBM's real concern over the delays incident to the certification process? It appears to be the threat of unlawful marketing of unauthorized equipment by IBM's competitors, both foreign and domestic. On this score, MSTV is highly sympathetic: IBM should not suffer a competitive disadvantage because it plays by the rules. But if products are being introduced into the U.S. market without first undergoing full and adequate Commission certification, the solution is not to abandon the Commission's certification program in favor of self-verification. If producers cannot be trusted to comply with certification, surely a self-verification program would simply invite additional noncompliance. The remedy is to provide enough Commission resources to make the certification program meaningful, effective, and truly even-handed.

For the same reason, IBM's peremptory dismissal of the certification rules as "anachronistic" is plainly wide of the mark. If the "fundamental" policy objective that the certification process serves is to protect licensed operations from devices that present a substantial risk of harmful interference, then IBM's comments should serve only to enhance

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[2/](...continued)
European manufacturers that wish to export electronics equipment into the United States must comply with the Commission's rules.

the Commission's concerns. See In the Matter of Revision of Part 15 of the Rules Regarding the Operation of Radio Frequency Devices Without an Individual License, 6 FCC Rcd 1683, 1686 (1991) ("[e]quipment subject to certification is placed in that category because there is sufficient risk of interference if noncompliance occurs that scrutiny of measurement results by the Commission is warranted").

Since 1970, there has been no change in the need for vigilance against the sale and operation of devices that cause interference to licensed operations.[3/] Plainly, unless RF producing devices are subjected to independent scrutiny, the inevitable pressures of the highly competitive personal electronics market will lead to the introduction of devices that cause serious interference to licensed operations.[4/] The probable results of a program of self-verification are not difficult to predict: large numbers of unauthorized devices will find their way into the market, and a significant number of these devices will cause interference to licensed operations.[5/]

[3/] Indeed, personal computers are a prime example of devices that sometimes generate unintentional RF emissions that interfere with the operation of other equipment, including radios and television sets.

[4/] The fact that the electronics market is highly competitive makes the need for independent monitoring of compliance with the Part 15 rules all the more important, because companies that are pressed for time and resources are more likely to take short cuts than companies that can afford to be deliberate in their marketing activities.

[5/] Moreover, the affected parties will face the difficult problem of identifying the source of the interference. Although a television broadcaster or land mobile radio

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II. Alcatel's Proposal to Allow Presale of RF Devices To the General Public.

Alcatel Network Systems argues that the Commission should permit the presale of RF devices to individual consumers, provided that no units are shipped until the device receives Commission authorization. Comments of Alcatel, ET Docket No. 94-45, at 3 (September 6, 1994). "[T]he Commission must allow all manufacturers maximum flexibility to market their product." Id.

For the reasons outlined by the Commission, see Notice, at ¶ 9, the presale of equipment to the general public would create a serious risk that devices causing interference to licensed operations would be released on a wide-spread basis. MSTV continues to oppose the pre-sale of devices that have not been certified as non-interfering, because such action will inevitably lead to the further "AM-ization" of the broadcast spectrum.[6/]

[5/](...continued)
operator may have both the drive and financial wherewithal to trace a source of interference, it is far less likely that individual consumers who suddenly discover that they no longer can receive a particular television station over-the-air will have access to either the resources or the time to investigate an interference problem. For example, the operation of an unauthorized cordless telephone in a single apartment could preclude a number of residents in the same building from using their televisions. See Comments of MSTV, ET Docket 93-235, at 2-5 (November 8, 1993).

[6/] See MSTV, Petition for Inquiry (October 4, 1989) (cataloguing the numerous sources of licensed interference to broadcast television and asking for comprehensive FCC oversight and assessment of such interference); see also Comments of MSTV, ET Docket No. 93-235 (December 8, 1993); Comments of MSTV, ET Docket No. 92-255 (March 1, 1993); (continued...)

III. EIA/CEG's Proposal for Further Liberalization of the The Commission's Marketing Rules.

EIA/CEG argues that the Commission should apply its new RF marketing rules to all RF producing devices, including those subject to type acceptance procedures. Comments of EIA/CEG, ET Docket No. 94-45, at 4-5 (September 6, 1994). The Commission has adopted different procedures -- verification, certification, and type-acceptance -- because different kinds of devices do not pose the same threat of interference to licensed operations. Nothing in EIA/CEG's comments addresses this fundamental point. Plainly, the reasons that led the Commission to require different levels of scrutiny for different devices have not ceased to exist. In consequence, the Commission should not abandon the careful distinctions that it deliberately created. MSTV believes that the blanket lifting of pre-authorization restrictions is neither appropriate nor necessary.

Relatedly, EIA/CEG argues that the Commission should abolish the requirement that electronics manufacturers obtain an experimental station license or special temporary authorization ("STA") to operate a device that will ultimately be authorized under Part 15 of the Commission's Rules.[7] Id. at 5-6. EIA/CEG "urges the Commission to clearly exempt from any further licensing requirements RF devices that are operated at trade

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[6] (...continued)
Comments of MSTV, Gen. Docket No. 89-349 (September 29, 1989); Reply Comments of MSTV, Gen. Docket No. 83-325 (June 3, 1983).

[7] In the draft rules, these requirements would be continued pursuant to section 2.803(e)(6).

shows that will ultimately be authorized under Part 15." Id. at 6.

MSTV opposes the further weakening of the Commission's RF device marketing and testing rules. Part 15 devices include any device that produces RF emissions in bands allocated to licensed operations, including large industrial, scientific, and medical equipment; in short, equipment capable of causing widespread interference to licensed operations. Beyond requiring manufacturers to make an affirmative representation that their devices are non-interfering, the STA and experimental license procedures provide licensed operators with an invaluable means of tracking potential sources of interference. MSTV believes that it is entirely appropriate for the Commission to retain the requirement that an operator obtain an STA or experimental license before operating unlicensed Part 15 devices.

IV. Proposals to Limit On-Site Testing of Unauthorized Devices.

Finally, two commenters have criticized the Commission's proposed on-site testing rules as potentially causing harmful interference to licensed operations. See Comments of AT&T, ET Docket No. 94-45, at 7 (September 6, 1994); Comments of CBEMA, ET Docket No. 94-45, at 4 (September 6, 1994). These concerns are valid. See Comments of MSTV, ET Docket No. 94-45, at 7-9 (September 6, 1994).

AT&T and CBEMA both propose the adoption of caps to limit the use of on-site testing. In lieu of broadly

authorizing on-site testing, "CBEMA believes that strict numerical limits on the number of devices that can be utilized for such tests, with specific reporting requirements designed to assure that manufacturers know where such devices are being utilized, should instead be adopted." Comments of CBEMA, ET Docket No. 94-45, at 4 (September 6, 1994). "[D]efining residential sites may prove difficult, particularly in the age of telecommuting, as more businesses co-locate in homes." Id. In a similar vein, AT&T argues that "[a]dopting numerical limits obviates any need for ambiguous verbal descriptions of business operation sites to determine market acceptability." Comments of AT&T, ET Docket No. 94-45, at 7 (September 6, 1994).

The use of numerical limits and strict reporting would provide a meaningful additional protection against harmful interference from the operation of unauthorized RF devices incident to on-site testing programs. Moreover, adopting such limitations would significantly reduce the risk that on-site testing would be used as de facto means of pre-selling unauthorized equipment. In consequence, MSTV urges the Commission to consider carefully adopting the AT&T/CBEMA proposal.

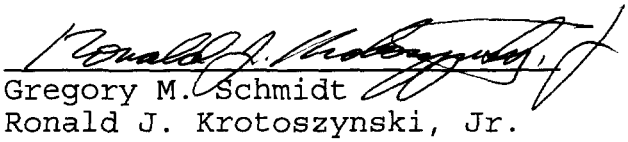
CONCLUSION

IBM's proposal to abandon certification in favor of self-verification would inevitably lead to the introduction of innumerable new sources of interference to licensed operations, including television broadcasting. The answer to the problem of unauthorized devices reaching the market is not abandoning the

certification process, but rather increased vigilance in enforcement. Relatedly, the proposals by Alcatel and EIA/CEG present serious risks of additional interference, much of which will be very difficult for licensed operators to trace. The Commission should reject these proposals, and maintain its historic commitment to protect the licensed services, including television broadcasting, from interference from unlicensed devices.

Respectfully submitted,

ASSOCIATION FOR MAXIMUM
SERVICE TELEVISION, INC.



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